

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT SINCLAIR, *et al.*,

Plaintiffs,

v.

THE HOME DEPOT, U.S.A., INC.,

Defendant.

CASE NO. C19-1971-JCC

ORDER

This matter comes before the Court on Plaintiffs’ motion to remand (Dkt. No. 32) and Defendant’s motion to dismiss (Dkt. No. 26). Having thoroughly considered the briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS in part Plaintiff’s motion to remand (Dkt. No. 32) and DENIES as moot Defendant’s motion to dismiss (Dkt. No. 26) for the reasons explained herein.

I. BACKGROUND

Plaintiffs brought suit in King County Superior Court in November 2019 following Plaintiff Robert Sinclair’s February 2019 slip and fall at a Home Depot in Shoreline, Washington. (Dkt. No 1-1.) In their complaint, Plaintiffs alleged that, “[a]s a result of slipping and falling, plaintiff suffered severe permanent and disabling injuries causing him to have to obtain medical care, including surgery.” (*Id.* at 5.) Defendant removed the case in December

2019, claiming that it was “‘facially apparent’ from the nature of the claims alleged, and more likely than not from the types of damages sought, that the amount in controversy exceeds \$75,000.” (Dkt. No. 1 at 3.) Since then, Defendant has repeatedly sought the Court’s intervention in resolving discovery disputes. (*See* Dkt. Nos. 10, 19.) Defendant now seeks to dismiss the case as a sanction for Plaintiffs’ failure to timely respond to Defendant’s discovery request as ordered by the Court. (Dkt. No. 26.) Concurrently, Plaintiffs move to remand on the ground that the amount in controversy requirement is not satisfied. (Dkt. No. 32.) Because this Court’s jurisdiction is a threshold matter, the Court must address this issue before considering Defendant’s motion for sanctions.

II. DISCUSSION

A. Legal Standard

A party to a civil action brought in state court may remove that action to federal court if the district court would have had original jurisdiction at the time of both commencement of the action and removal. *See* 28 U.S.C. § 1441(a). Once removed, the case can be remanded to state court for either lack of subject matter jurisdiction or defects in the removal procedure. *See* 28 U.S.C. § 1447(c). The removing defendant bears the burden of proving, by a preponderance of the evidence, each element necessary to establish jurisdiction. *Gaus v. Miles*, 980 F.2d 564, 567 (9th Cir. 1992). Federal subject matter jurisdiction exists in civil actions when the parties are completely diverse and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. When the amount in controversy is not clear from the face of the complaint, courts may consider other “summary judgment-type” evidence to determine whether the amount reaches the jurisdictional minimum. *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005).

B. Amount in Controversy

Given that the parties are diverse, the issue presented is whether the amount in controversy exceeds \$75,000. Plaintiffs indicate that their complaint contained a clerical error. Robert Sinclair did not require surgery for his injuries. He received chiropractic, physical therapy

1 and rehabilitative medical care, all of which are complete. (Dkt. No. 32 at 2–3.) He missed no
2 time from work and is not claiming any wage losses from his injuries. (*Id.* at 3.) His medical
3 expenses totaled just over \$14,000. (*Id.*) The parties, in recently attempting to negotiate a
4 settlement in the matter, discussed a settlement ranging from \$28,000 to \$62,500. (Dkt. No. 38 at
5 2.)

6 Once consideration is given to Plaintiffs’ clerical error, the claims described in their
7 complaint do not facially demonstrate that the amount in controversy in this matter exceeds
8 \$75,000. Therefore, to defeat Plaintiffs’ motion to remand, Defendant must present “summary
9 judgment-type” evidence to demonstrate that the amount in controversy exceeds \$75,000.
10 *Kroske*, 432 F.3d at 980. Defendant fails to do so. Instead, it argues that Plaintiffs should not be
11 rewarded for their behavior. (Dkt. No. 36 at 10–11.) But the cases Defendant cites are inapposite.
12 (*See* Dkt. No. 36 at 8–9.) All involve Plaintiffs who attempted to game the system at the eleventh
13 hour or had a change in circumstances *after* the complaint was filed, thereby bringing the amount
14 in controversy below \$75,000. *See, e.g., Hill v. Blind Indus. and Servs. of Maryland*, 179 F.3d
15 754, 757 (9th Cir. 1999); *Selkowitz v. Litton Loan Servicing, LP*, 2010 WL 3733928, slip op. at 8
16 (W.D. Wash. 2010); *Townsley v. GEICO Indem. Co.*, 2013 WL 12090082, slip op. at 1 (W.D.
17 Wash. 2013); *Multistar Indus. v. Gen. Motors LLC*, 2019 WL 6877473, slip op. at 2 (E.D. Wash.
18 2019). This is not the case here. There was no change in circumstances. Plaintiff never required
19 surgery. Nor is Plaintiff now attempting to revise otherwise valid claims in an attempt to game
20 the system. Plaintiff simply never had those claims to begin with. Moreover, the Court finds that
21 prejudice, if any, to Defendant from removal is minimal, as no substantive rulings have yet been
22 made on this matter. That being said, Defendant had a reasonable basis to conclude that removal
23 was warranted, based upon Plaintiffs’ erroneous complaint. Therefore, the Court will not award
24 attorney fees to Plaintiffs in accordance with 28 U.S.C. § 1447(c).

25 Finally, because this Court lacks subject matter jurisdiction here, it has no basis to impose
26 the sanction Defendant seeks in its motion to dismiss. (*See* Dkt. No. 26.)

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs' motion for remand (Dkt. No. 32) is GRANTED in
3 part and Defendant's motion to dismiss (Dkt. No. 26) is DENIED as moot. The Clerk is
4 DIRECTED to remand this case to King County Superior Court.

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6 DATED this 24th day of November 2020.

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10 John C. Coughenour
11 UNITED STATES DISTRICT JUDGE
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